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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY TABAREZ,

Plaintiff,

v.

DIANA BUTLER, et al.,

Defendants.

2:04-cv-0360 LKK KJN PC

**STIPULATION FOR PROTECTIVE
ORDER CONCERNING
CONFIDENTIAL INVESTIGATIVE
REPORTS AND OTHER DOCUMENTS
REFERENCING NONPARTIES**

THE PARTIES AND ORDERED BY THE COURT AS FOLLOWS:

A. CONFIDENTIAL MATERIAL SUBJECT TO THIS PROTECTIVE ORDER

Plaintiff has requested internal affairs investigative reports concerning a riot at Folsom State Prison on April 8, 2002, and memos or other correspondence, pertaining to any breach of policy or use of excessive force concerning that riot. The California Department of Corrections and Rehabilitation (CDCR) deems the requested documents confidential material.

The confidential material references CDCR employees and inmates who are not parties in this action, and includes statements by nonparties who witnessed the riot, or events preceding or following the riot that may be relevant to this action. All confidential material is considered to be

1 “official information” within the meaning of California Evidence Code sections 1043 and 1045
2 and Penal Code section sections 832.7 and 832.8. In addition, the confidential material is subject
3 to a qualified privilege as official information under Federal common law. Furthermore, the
4 requested documents contain personal information within the meaning of the Information
5 Practices Act, which is protected by California Civil Code section 1798.24.

6 As are countless other investigative reports by CDCR’s Internal Affairs Division, the
7 confidential material in this case was prepared on the basis of, among other things, interviews
8 with custodial staff and inmates with the understanding that statements made in the course of the
9 interviews would remain confidential. The disclosure of the confidential material without a
10 protective order would undermine CDCR’s ability to assure its employees and inmates that their
11 statements will be maintained in confidence. The likely result of unprotected disclosure of these
12 reports is that CDCR employees and inmates, whether subjects of investigations or witnesses to
13 incidents being investigated, will be unwilling or less willing to cooperate with investigators.
14 Accordingly, a protective order is warranted for these reports.

15 **B. CONDITIONS FOR RELEASE OF CONFIDENTIAL MATERIAL**

16 CDCR will produce the confidential material, subject to this protective order on the
17 following conditions:

18 1. The social security numbers and any other confidential personal information of the
19 CDCR employees who are the subject of the confidential material shall be redacted. Similarly,
20 the confidential personal information of inmates (FBI and CI&I numbers, social security
21 numbers, birthdates) of prisoners shall be redacted.

22 2. Prior notice as required by Civil Code section 1798.24 (k) will be given to individuals
23 whose names or other identifying information are disclosed in the material.

24 3. The confidential material may be disclosed only to the following persons:

25 (a) Counsel of record for Plaintiff in this action;

26 (b) Paralegal, stenographic, clerical and secretarial personnel regularly employed by
27 counsel for Plaintiff;
28

1 (c) Court personnel and stenographic reporters engaged in such proceedings as are
2 incidental to the preparation for the trial in this action;

3 (d) Any outside expert or consultant retained by Plaintiffs' counsel for purposes of this
4 action;

5 (e) Witnesses to whom the confidential material may be disclosed during the
6 preparation for trial and trial, provided that no witness may not have copies of any of the
7 confidential material, and each witness shall be informed and agree to be bound by the terms of
8 this order. In no event may plaintiff or any other inmate have possession of any material
9 produced pursuant to this subpoena. Counsel for the parties acknowledge that such access would
10 constitute a violation of Title 15, California Code of Regulations, section 3370(b) and would
11 compromise the safety and security of the institution.

12 3. Plaintiff's counsel and his legal assistants and consultants shall not make copies of the
13 confidential material except as necessary for purposes of this litigation.

14 4. All confidential material in possession of Plaintiff's counsel shall be destroyed or
15 returned to the CDCR within 20 days of the time it is no longer needed for purposes of this
16 litigation.

17 5. When Plaintiffs' counsel returns or destroys the confidential material, he shall provide
18 Defendants' counsel with a declaration stating the all confidential material has been returned or
19 destroyed.

20 6. No confidential material obtained by Plaintiff's counsel shall be disclosed except as is
21 necessary in connection with this or related litigation, including appeals, and not for any other
22 purpose, including any other litigation.

23 7. Any confidential material filed with the Court by either party shall be filed and
24 maintained under seal.

25 8. Nothing in this protective order is intended to prevent officials or employees of the State
26 of California, or other authorized government officials, from having access to confidential
27 material to which they would have access in the normal course of their official duties.
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9. The provisions of this protective order are without prejudice to the right of any party:

(a) To apply to the Court for a further protective order relating to any confidential material or relating to discovery in this litigation;

(b) To apply to the Court for an order removing the confidential material designation from any documents;

(c) To object to a discovery request.

10. The provisions of this order shall remain in full force and effect until further order of this Court.

IT IS SO STIPULATED.

Dated: February 18, 2010

/s/ David A. Carrasco

DAVID A. CARRASCO
Attorney for Defendants
Acuna, Baber, Bunnell, Rendon, and Rios

Dated: February 18, 2010

/s/ Jeffrey M. Curtiss

JEFFREY M. CURTISS
Jeffrey M. Curtiss
Stanzler Funderburk & Castellon LLP
Attorney for Defendant Lemon

Dated: February 18, 2010

/s/ Gary W. Gorski

GARY W. GORSKI
Attorney for Plaintiff
Gregory Tabarez

IT IS SO ORDERED

Dated: February 19, 2010

/s/ Kendall J. Newman

KENDALL J. NEWMAN
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT